
OLR Bill Analysis

HB 6431

AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS.

SUMMARY:

This bill authorizes health care providers, i.e., licensed (1) doctors, (2) chiropractors, (3) podiatrists, (4) naturopaths, and (5) optometrists, to enter into cooperative arrangements (CA) with each other to negotiate fees as a group with insurers or other managed care organizations (MCO). They may apply to the attorney general for a certificate of public advantage, generally exempting them from state antitrust laws. Those who choose not to be certified may establish CAs whose legality would be determined under applicable antitrust law.

Under the bill, the attorney general must actively supervise all CAs based on the annual report they file, including those without a certificate of public advantage. It subjects MCOs to civil penalties for refusing to negotiate in good faith with certified CAs.

EFFECTIVE DATE: October 1, 2013

DEFINITIONS

Cooperative Arrangement

Under the bill, a CA is an agreement among two or more health care providers for (1) sharing, allocating, or referring patients, personnel, instructional programs, support services, or facilities or (2) negotiating fees, prices, or rates with MCOs. It includes a merger, acquisition, or joint venture of two or more health care providers, including physician practice groups.

Certificate of Public Advantage

A “certificate of public advantage” is a certificate issued by the attorney general authorizing health care providers that are parties to a

CA to engage in conduct that could lessen competition in a relevant health care market. The criteria for determining if a CA could lessen competition include (1) the adverse impact the CA could have on the quality, access, or price of health care to consumers and (2) whether other arrangements are available that could achieve the same benefits with less restriction on competition.

CERTIFICATE OF PUBLIC ADVANTAGE APPLICATIONS

Contents

Any two or more health care providers may pay a \$100 fee and apply to the attorney general for a certificate of public advantage. They must supply:

1. their name or names;
2. a description of the nature and scope of the CA;
3. a description of any contractual considerations, including money, passing to a party under the CA;
4. evidence showing the CA's benefits outweigh its disadvantages; and
5. any other information the attorney general requires.

Information that is proprietary under the state Freedom of Information Act is confidential and exempt from public disclosure.

Process

The attorney general must review all applications and issue a written decision approving or denying them within 90 days. After notifying all interested parties, he may conduct an information-gathering hearing.

His decision must state the benefits and disadvantages of the CA and his conclusion as to whether the benefits outweigh the disadvantages.

Considerations

Under the bill, the attorney general cannot approve a CA unless he finds that the benefits outweigh the disadvantages.

Benefits. Benefits include:

1. enhancing the quality of health services to consumers,
2. gains in cost efficiency of providing services,
3. improving the use and access to services and equipment, and
4. avoiding resource duplication.

Disadvantages. Disadvantages include:

1. the potential reduction in competition;
2. the adverse impact on quality, access, or price of health care to consumers; and
3. the availability of arrangements that achieve the same benefits with less restriction on competition.

The attorney general must also consider the state's relevant statutory long-range health care plan in ruling on a CA's application.

ANTITRUST

Annual Progress Reports

Under the bill, health care providers in certified CAs must submit annual progress reports on a form prescribed by the attorney general along with a \$100 fee. The attorney general must actively supervise certified CAs by reviewing their progress reports to evaluate whether their conduct is consistent with their application and whether the benefits continue to outweigh the disadvantages.

Revocation and Modification Hearings

If the attorney general determines that benefits no longer outweigh the disadvantages, he must notify the certificate holder and hold a hearing to determine whether to modify or revoke the certificate of public advantage. But, he cannot revoke or modify a certificate more

than three years after its initial issuance.

The modification or revocation takes effect 90 days from the date the attorney general mails notice of a final decision.

APPEALS

Any health care provider denied a certificate or any certificate holder can appeal a certificate modification or revocation as if it were an action taken in a contested case hearing. This entitles it to an administrative hearing and, if it continues to be aggrieved, to a Superior Court appeal.

ANTITRUST LITIGATION

The bill also permits the attorney general, without a time limitation, to investigate and bring suit under the Connecticut Antitrust Act when he has reason to believe that an approved CA is not performing or providing services as described in its application or progress report.

MANAGED CARE ORGANIZATIONS

Under the bill, MCOs are required to negotiate in good faith with certified CAs. Failure to do so violates the Connecticut Unfair Trade Practices Act and also subjects violators to a civil fine of \$25,000 per day.

BACKGROUND

Antitrust

With limited exceptions, state and federal law prohibit restraint of any part of trade or commerce, including contracts intended to, or that have the effect of:

1. price fixing;
2. fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale, or supply of any part of trade or commerce;
3. allocating or dividing customers or markets, either functionally or geographically in any part of trade or commerce; or

4. refusing to deal or coercing, persuading, or inducing third parties to refuse to deal with another person.

Enforcement

The attorney general is authorized to litigate state and federal antitrust cases. Persons, including consumers, are also entitled to file suit and may recover treble damages for the injury to their business or property plus reasonable attorney's fees.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 7 Nay 4 (03/14/2013)